

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

VITAWORKS IP, LLC, AND)	
VITAWORKS, LLC)	
)	
Plaintiffs,)	C.A. No. 19-2259 (GBW)
)	(Consolidated)
v.)	
)	
GLANBIA NUTRITIONALS (NA), INC., ET)	
AL.,)	
)	
Defendants.)	REDACTED - PUBLIC VERSION
)	Filed August 3, 2023

NOTICE OF EVENTS SUBSEQUENT TO CLOSE OF BRIEFING

In advance of the August 2, 2023 hearing concerning QYP's Emergency Motion to Compel Compliance with, and Remedy Violation of, the Stipulated Protective Order (the "Motion") (D.I. 253), QYP provides the following update regarding several recent developments since the close of briefing on the Motion.

First, QYP provides excerpts relevant to the Protective Order violation from the deposition of Dr. Songzhou Hu, taken on July 10, 2023, at which Dr. Hu testified as to the following:¹

- Dr. Hu spoke to Dr. Qi in the hours following the inspection of QYP's facility. Ex. 1 (Hu Dep. Tr. 312:3–16; 313:3–17).
- Dr. Hu received QYP information from Dr. Qi, which Dr. Hu characterized as "barely anything" and "nothing useful," yet Dr. Hu testified that he did not "recall" what the information was. *Compare* Ex. 1 (Hu Dep. Tr. 310:1–311:2; 311:11–22) *with* D.I. 254, Ex. 1.
- Dr. Hu was deeply involved in Fangda's preparation for conducting the inspection of QYP, including, on his own initiative, preparing a lengthy "instruction manual" for Fangda to follow. Ex. 1 (Hu. Dep. Tr. 314:2–315:16; 315:25–316:3; 316:18–317:3). The instruction manual has not been produced, Ex. 2 (July 13, 2023 Email fr. J. Mooney), and was not included on any privilege log submitted in response to the Court's Orders. (*See* D.I. 246; D.I. 247.)
- Dr. Hu testified about his communications with Cravath leading up to Cravath's disclosure of the PO violation to counsel for QYP on May 16, 2023, and Cravath's subsequent communications to counsel for QYP regarding the violation. Ex. 1 (Hu Dep. Tr. 276:6–9; 278:21–279:5; 279:18–21; 280:4–15; 286:12–21; 289:25–290:4; 290:14–24; 291:3–15; 293:4–294:11; 295:6–12; 295:19–22; 296:1–6; 296:15–23; 297:14–301:13; 352:4–353:9). Dr. Hu also testified about the circumstances concerning the preparation and submission of his May 25, 2023 statement to the Court on behalf of Vitaworks (D.I. 235) and his declaration submitted in response to the Court's May 30, 2023 Order (D.I. 240). Ex. 1 (Hu Dep. Tr. 303:10–16; 304:13–20; 307:22–308:8; 308:10–16). Counsel for Vitaworks instructed Dr. Hu not to answer numerous questions related to the protective order violation on the ground of attorney-client privilege. *See, e.g.*, Ex. 1 (Hu Dep. Tr. at 293:4–11; 294:5–11; 295:6–12; 296:15–23; 297:14–22; 300:5–14; 304:13–20; 314:5–17; 315:25–316:3; 319:16–320:4).

Second, on April 17, 2023, within one week after the QYP plant inspection, Dr. Hu amended two pending patent applications (US 2023/0192602 and US 2023/0192603), which were

¹ To avoid overloading the Court with paper, we have not included the deposition exhibits discussed during the cited passages, but we can provide such exhibits upon request.

filed in February 2023 and are continuations of U.S. Patent Nos. 10,040,755 and 10,961,183, previously asserted in this case. *See* D.I. 250. Exhibits 3 and 4 attached hereto show the April 17 amendments. Neither amendment was prompted by an office action and the applicant gave no reason for the amendments to the USPTO. Dr. Hu testified that he did not have a reason for amending two pending patent applications in the days after the QYP plant inspection. Ex. 1 (Hu Dep. Tr. 51:17–25; 55:15–56:6; 56:19–57:14; 64:13–65:1; 66:4–11; 67:2–68:14). The new claims Vitaworks seeks are directed to processes carried out in more than one vessel and, in certain dependent claims, use of an ion exchange resin. No such process is described or exemplified in the common specification of both applications. The April 17 amendments add new claims which include, among other things, particular pH ranges for the mother liquor in certain steps. Ex. 1 (Hu Dep. Tr. 63:13–16). Vitaworks’ inspection team had access to QYP’s technical information germane to each of these new claims and limitations during the April 2023 inspection.

Third, as mentioned in QYP’s June 30 Reply Brief (D.I. 273 at 10 n. 11), Vitaworks informed Defendants on June 29 that it permanently destroyed 45GB of video obtained during the inspection of QYP’s facility. Defendants have since learned that the video footage destroyed by Vitaworks’ counsel was the video footage “from body cameras that the lawyers from Fangda were wearing during the inspection of QYP’s facility.” *Id.*, Ex. 4 (June 29 Letter fr. S. Goswami); Ex. 5 (July 5 Email fr. J. Mooney). These materials were destroyed after Vitaworks’ counsel at Cravath learned the of the Protective Order violation. (D.I. 254, Ex. 7.)

Dated: July 26, 2023

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 26, 2023, a copy of the foregoing document was served on the counsel listed below in the manner indicated:

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